

108TH CONGRESS
2D SESSION

S. 2485

To amend title 38, United States Code, to improve and enhance the authorities of the Secretary of Veterans Affairs relating to the management and disposal of real property and facilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 1, 2004

Mr. SPECTER (by request) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to improve and enhance the authorities of the Secretary of Veterans Affairs relating to the management and disposal of real property and facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38,**
4 **UNITED STATES CODE.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Department of Veterans Affairs Real Property and Fa-
7 cilities Management Improvement Act of 2004”.

1 (b) REFERENCES TO TITLE 38 UNITED STATES
 2 CODE.—Except as otherwise expressly provided, whenever
 3 in this Act an amendment or repeal is expressed in terms
 4 of an amendment to, or repeal of, a section or other provi-
 5 sion, the reference shall be considered to be made to a
 6 section or other provision of title 38, United States Code.

7 **SEC. 2. AUTHORITY TO USE PROJECT FUNDS TO CON-**
 8 **STRUCT OR RELOCATE SURFACE PARKING**
 9 **INCIDENTAL TO A CONSTRUCTION OR NON-**
 10 **RECURRING MAINTENANCE PROJECT.**

11 Section 8109 is amended by adding at the end the
 12 following new subsection:

13 “(j) Funds in a construction account or capital ac-
 14 count that are available for a construction project or non-
 15 recurring maintenance project may be used for the con-
 16 struction or relocation of a surface parking lot incidental
 17 to such project.”.

18 **SEC. 3. IMPROVEMENTS OF ENHANCED-USE LEASE AU-**
 19 **THORITIES.**

20 (a) BUSINESS PLAN CRITERIA.—Section 8162 is
 21 amended—

22 (1) in subsection (a)(2)(B), by striking “the
 23 Under Secretary for Health for applying the consid-
 24 eration under such a lease to the provision of med-
 25 ical care and services” and inserting “one of the

1 Under Secretaries for applying the consideration
2 under such a lease to the programs and activities of
3 the Department”; and

4 (2) in subsection (b)(4)(A), by striking “on the
5 leased property”.

6 (b) CONSIDERATION OF PROPOSALS FOR LEASES.—

7 (1) Section 8163 is amended—

8 (A) in subsection (a), by striking the first sen-
9 tence and inserting the following new sentence: “If
10 the Secretary proposes to enter into an enhanced-use
11 lease with respect to certain property, the Secretary
12 shall conduct a public hearing before entering into
13 the lease.”;

14 (B) in subsection (b), by striking “of the pro-
15 posed designation and of the hearing” in the matter
16 preceding paragraph (1) and inserting “on the pro-
17 posed lease and the hearing to the congressional vet-
18 erans’ affairs committees and to the public”; and

19 (C) in subsection (c)—

20 (i) in paragraph (1)—

21 (I) by striking “to designate the prop-
22 erty involved” and inserting “to enter into
23 an enhanced-use lease of the property in-
24 volved”; and

1 (II) by striking “to so designate the
 2 property” and inserting “to enter into the
 3 lease”;

4 (ii) in paragraph (2), by striking “90-day”
 5 and inserting “45-day”; and

6 (iii) by striking paragraph (4).

7 (2)(A) The heading of such section is amended to
 8 read as follows:

9 **“§ 8163. Proposals for property to be leased”.**

10 (B) The table of sections at the beginning of chapter
 11 81 is amended by striking the item relating to section
 12 8163 and inserting the following new item:

“8163. Proposals for property to be leased.”.

13 (c) DISPOSAL AUTHORITY.—Section 8164 is amend-
 14 ed—

15 (1) in subsection (a)—

16 (A) by striking “by requesting the Admin-
 17 istrator of General Services to dispose of the
 18 property pursuant to subsection (b)”;

19 (B) by striking the last sentence;

20 (2) in subsection (b)—

21 (A) by striking “and the Administrator of
 22 General Services jointly determine” and insert-
 23 ing “determines”;

24 (B) by striking “and the Administrator
 25 consider” and inserting “considers”;

1 (3) in subsection (c), by striking “90 days” and
2 inserting “45 days”.

3 (d) USE OF PROCEEDS.—Section 8165 is amended—
4 (1) in subsection (a)—

5 (A) in paragraph (1), by striking “Funds
6 received” and inserting “Except as provided in
7 paragraph (2), funds received”;

8 (B) by redesignating paragraph (2) as
9 paragraph (3);

10 (C) by inserting after paragraph (1) the
11 following new paragraph (2):

12 “(2) Funds received by the Department under an en-
13 hanced-use lease implementing a business plan proposed
14 by the Under Secretary for Benefits or the Under Sec-
15 retary for Memorial Affairs and remaining after any de-
16 duction from such funds under subsection (b) shall be
17 credited to applicable appropriations of the Veterans Ben-
18 efits Administration or National Cemetery Administra-
19 tion, as the case may be.”; and

20 (D) in paragraph (3), as so redesignated,
21 by striking “nursing home revolving fund” and
22 inserting “Capital Asset Fund established
23 under section 8122A of this title”;

24 (2) in subsection (b)—

25 (A) by inserting “(1)” after “(b)”

1 (B) in paragraph (1), as so designated, by
 2 striking “for that fiscal year”; and

3 (C) by adding at the end the following new
 4 paragraph:

5 “(2) The Secretary may also deduct from the pro-
 6 ceeds of any enhanced-use lease an amount to reimburse
 7 applicable appropriations of the Department for any ex-
 8 penses incurred by the Secretary in the development of
 9 additional enhanced-use leases. Amounts so deducted shall
 10 be utilized to reimburse such appropriations.”; and

11 (3) by striking subsection (c).

12 **SEC. 4. DISPOSAL OF REAL PROPERTY OF THE DEPART-**
 13 **MENT OF VETERANS AFFAIRS.**

14 (a) IN GENERAL.—(1) Subchapter II of chapter 81
 15 is amended by inserting after section 8122 the following
 16 new section:

17 **“§ 8122A. Disposal of real property**

18 “(a) IN GENERAL.—(1) To the extent provided in ad-
 19 vance in appropriations Acts, the Secretary may, in ac-
 20 cordance with this section and sections 8122 and 8164
 21 of this title, dispose of real property of the Department,
 22 including land and structures and equipment associated
 23 with such property, that is under the jurisdiction or con-
 24 trol of the Secretary by—

1 “(A) transfer to or exchange with another de-
2 partment or agency of the Federal Government;

3 “(B) conveyance to or exchange with a State or
4 a political subdivision of a State, an Indian tribe, or
5 other public entity; or

6 “(C) conveyance to or exchange with any pri-
7 vate person or entity.

8 “(2) The Secretary may exercise the authority in
9 paragraph (1) notwithstanding the following provisions of
10 law:

11 “(A) Sections 521, 522, and 541 through 545
12 of title 40.

13 “(B) Section 501 of the McKinney-Vento
14 Homeless Assistance Act (42 U.S.C. 11411).

15 “(3) In any transfer, exchange, or conveyance of real
16 property under this subsection, the Secretary shall obtain
17 consideration in an amount equal to the fair market value
18 of the property, as determined by the Secretary.

19 “(b) TREATMENT OF PROCEEDS.—Proceeds from the
20 transfer, exchange, or conveyance of real property under
21 subsection (a) shall be deposited in the Capital Asset Fund
22 under subsection (c).

23 “(c) CAPITAL ASSET FUND.—There is established on
24 the books of the Treasury of the United States a revolving

1 fund known as the Capital Asset Fund (in this section
2 referred to as the ‘Fund’).

3 “(d) ELEMENTS OF FUND.—The Fund shall consist
4 of the following:

5 “(1) Amounts authorized to be appropriated to
6 the Fund.

7 “(2) Proceeds from the transfer, exchange, or
8 conveyance of real property under subsection (a)
9 that are deposited in the Fund under subsection (b).

10 “(3) Funds to be deposited in the Fund under
11 section 8165(a)(3) of this title.

12 “(4) Any other amounts specified for transfer
13 to or deposit in the Fund by law.

14 “(e) USE OF AMOUNTS IN FUND.—Subject to the
15 provisions of appropriations Acts, amounts in the Fund
16 shall be available for purposes as follows and in the fol-
17 lowing order of priority:

18 “(1) For costs of the Department in disposing
19 of real property, including costs associated with
20 demolition, environmental clean-up, maintenance
21 and repair, improvements to facilitate disposal, and
22 associated administrative expenses.

23 “(2) For costs of the Department associated
24 with proposed disposals of real property of the De-
25 partment.

1 “(3) For costs of non-recurring capital projects
2 of the Department.

3 “(f) REPORTS.—The Secretary shall include with the
4 budget justification documents submitted to Congress
5 each year with the budget of the President for the fiscal
6 year beginning in such year (as submitted pursuant to sec-
7 tion 1105 of title 31) a report setting forth the following:

8 “(1) A statement of each disposal of real prop-
9 erty to be undertaken in such fiscal year that is val-
10 ued in excess of the major medical facility project
11 threshold specified in section 8104(a)(3)(A) of this
12 title.

13 “(2) A description of each disposal of real prop-
14 erty that was completed in the fiscal year ending in
15 the year before such report is submitted.”.

16 (2) The table of sections at the beginning of such
17 chapter is amended by inserting after the item relating
18 to section 8122 the following new item:

“8122A. Disposal of real property.”.

19 (b) CONFORMING AMENDMENT.—Section 8164(a) is
20 amended in the second sentence by inserting “or 1822A”
21 after “section 8122”.

22 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
23 authorized to be appropriated for the Department of Vet-
24 erans Affairs for fiscal year 2005, \$10,000,000 for deposit

1 in the Capital Asset Fund under section 1822A(c) of title
 2 38, United States Code (as added by subsection (a)).

3 **SEC. 5. MODIFICATION OF OTHER REAL PROPERTY DIS-**
 4 **POSAL AUTHORITIES.**

5 (a) GENERAL LIMITATIONS ON DISPOSAL.—Para-
 6 graph (2) of subsection (a) of section 8122 is amended
 7 to read as follows:

8 “(2) Except as provided in paragraph (3) of this sub-
 9 section, the Secretary may not during any fiscal year dis-
 10 pose of real property owned by the United States and
 11 under the jurisdiction and control of the Secretary that
 12 has an estimated value in excess of the major medical fa-
 13 cility project threshold specified in subsection
 14 8104(a)(3)(A) of this title unless—

15 “(A) the disposal is described in the budget jus-
 16 tification documents submitted to Congress each
 17 year with the budget of the President for the fiscal
 18 year beginning in such year (as submitted pursuant
 19 to section 1105 of title 31);

20 “(B) the Department receives consideration for
 21 the real property equal to the fair market value of
 22 the property, as determined by the Secretary; and

23 “(C) the net proceeds of the disposal are depos-
 24 ited in the Capital Asset Fund under section
 25 8122A(c) of this title.”.

1 (b) DISPOSAL PROCEDURES.—Subsection (d) of such
2 section is amended—

3 (1) by inserting “(1)” after “(d)”; and

4 (2) by adding at the end the following new
5 paragraphs:

6 “(2)(A) In the case of property (including land and
7 structures and equipment associated with such property)
8 that has an estimated value less than the major medical
9 facility project threshold specified in section
10 8104(a)(3)(A) of this title, the Secretary may dispose of
11 the property if—

12 “(i) the Secretary notifies the Administrator of
13 General Services of an intent to dispose of the prop-
14 erty; and

15 “(ii) a period of 30 days elapses after notice
16 under clause (i) during which period no other de-
17 partment or agency of the Federal Government ex-
18 presses an interest in assuming jurisdiction of the
19 property under the condition of paying the Secretary
20 the fair market value of the property, as determined
21 by the Secretary, of the property.

22 “(B) In disposing of property under subparagraph
23 (A), the Secretary shall publish a notice of sale in the real
24 estate section of a local newspaper of general circulation
25 serving the market in which the property is located.

1 “(3) In the case of property (including land and
2 structures and equipment associated with such property)
3 that has an estimated value in excess of the major medical
4 facility project threshold specified in section
5 8104(a)(3)(A) of this title, the Secretary may dispose of
6 the property if—

7 “(A) the Secretary complies with subsection
8 (a)(2) with respect to the property;

9 “(B) the Secretary—

10 “(i) notifies the Administrator of General
11 Services of an intent to dispose of the property;

12 “(ii) publishes in the Federal Register no-
13 tice of an intent to dispose of the property; and

14 “(iii) notifies the committees of an intent
15 to dispose of the property;

16 “(C) a period of 30 days elapses after notice
17 under subparagraph (B)(i) during which period no
18 other department or agency of the Federal Govern-
19 ment expresses an interest in assuming jurisdiction
20 of the property under the condition of paying the
21 Secretary the fair market value of the property, as
22 determined by the Secretary, of the property; and

23 “(D) a period of 60 days elapses after notice
24 under subparagraph (B)(iii).”.

1 **SEC. 6. TERMINATION OF NURSING HOME REVOLVING**
 2 **FUND.**

3 (a) **TERMINATION.**—(1) Section 8116 is repealed.

4 (2) The table of sections at the beginning of chapter
 5 81 is amended by striking the item relating to section
 6 8116.

7 (b) **CONFORMING AMENDMENT.**—Section
 8 8165(a)(3), as redesignated by section 3(d)(1)(D) of this
 9 Act, is further amended by striking “nursing home revolv-
 10 ing fund” and inserting “Capital Asset Fund under sec-
 11 tion 1822A of this title”.

12 (c) **TRANSFER OF UNOBLIGATED BALANCES TO CAP-**
 13 **ITAL ASSET FUND.**—Any unobligated balances in the
 14 nursing home revolving under section 8116 of title 38,
 15 United States Code, as of the date of the enactment of
 16 this Act shall be deposited in the Capital Asset Fund
 17 under section 8122A of title 38, United States Code (as
 18 added by section 4(a) of this Act).

19 **SEC. 7. INAPPLICABILITY OF LIMITATION ON USE OF AD-**
 20 **VANCE PLANNING FUND TO AUTHORIZED**
 21 **MAJOR MEDICAL FACILITY PROJECTS.**

22 Section 8104 is amended by adding at the end the
 23 following new subsection:

24 “(g) The limitation specified in subsection (f) shall
 25 not apply to projects for which funds have already been
 26 authorized by law in accordance with subsection (a)(2).”.

1 **SEC. 8. LEASE OF CERTAIN NATIONAL CEMETERY ADMINIS-**
2 **TRATION PROPERTY.**

3 (a) IN GENERAL.—Chapter 24 is amended by adding
4 at the end the following new section:

5 **“§ 2412. Lease of land and buildings**

6 “(a) LEASE AUTHORIZED.—The Secretary may lease
7 any undeveloped land and unused or underutilized build-
8 ings, or parts or parcels thereof, belonging to the United
9 States and part of the National Cemetery Administration.

10 “(b) TERM.—The term of a lease under subsection
11 (a) may not exceed 10 years.

12 “(c) LEASE TO PUBLIC OR NONPROFIT ORGANIZA-
13 TIONS.—(1) A lease under subsection (a) to any public
14 or nonprofit organization may be made without regard to
15 the provisions of section 3709 of the Revised Statutes (41
16 U.S.C. 5).

17 “(2) Notwithstanding section 1302 of title 40 or any
18 other provision of law, a lease under subsection (a) to any
19 public or nonprofit organization may provide for the main-
20 tenance, protection, or restoration of the leased property
21 by the lessee, as a part or all of the consideration for the
22 lease.

23 “(d) NOTICE.—Before entering into a lease under
24 subsection (a), the Secretary shall give appropriate public
25 notice of the intention of the Secretary to enter into the

1 lease in a newspaper of general circulation in the commu-
2 nity in which the lands or buildings concerned are located.

3 “(e) NATIONAL CEMETERY ADMINISTRATION FA-
4 CILITIES OPERATION FUND.—(1) There is established on
5 the book of the Treasury an account to be known as the
6 ‘National Cemetery Administration Facilities Operation
7 Fund’ (in this section referred to as the ‘Fund’).

8 “(2) The Fund shall consist of the following:

9 “(A) Amounts authorized to be appropriated to
10 the Fund.

11 “(B) Proceeds from the lease of land or build-
12 ings under this section.

13 “(C) Proceeds of agricultural licenses of lands
14 of the National Cemetery Administration.

15 “(D) Any other amounts authorized for deposit
16 in the Fund by law.

17 “(3) Amounts in the Fund shall be available to cover
18 costs incurred by the National Cemetery Administration
19 in the operation and maintenance of property of the Ad-
20 ministration.

21 “(4) Amounts in the Fund shall remain available
22 until expended.”.

- 1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of such chapter is amended by adding
3 at the end the following new item:

“2412. Lease of land and buildings.”.

